Western R. Corp., 4 Gray (Mass.) 333; *Joslin* v. *Grand Rapids Ice Co.*, 50 Mich. 516. But it is also held that the loss of earnings and business engagements is the necessary result of personal injuries and need not be specially pleaded. *Luck* v. *Ripon*, 52 Wis. 200; *Ehrgott* v. *New York*, 96 N. Y. 264.

MARINE INSURANCE—INSURANCE ON PROFITS ON CARGO—TOTAL LOSS—ABANDONMENT—PORTION SAVED DELIVERED TO OWNERS AS PART PAYMENT—CANADA SUGAR REF. CO. v. INSURANCE CO. OF NORTH AMERICA, 20 Sup. Court Rep. 239.—Petitioners insured the profits on a cargo of sugar, against total loss only, in the Atlantic Mutual Insurance Co., and shortly afterwards took out another policy in the Insurance Co. of N. A., which is the respondent in this suit. The ship while on her voyage stranded and was abandoned to the Atlantic Co., which succeeded in saving about 300 tons of the sugar, which they sent to Montreal and turned over to the Sugar Company as part payment of their total loss policy. The other Company refused to pay, on the ground that there was not a total loss of goods. *Held*, a recovery of insurance on profits of a cargo under a policy insuring against total loss only, and valuing the profits at the sum insured, will not be prevented where the cargo was abandoned as a total loss, by the fact that other insurers of the cargo subsequently saved a portion of it, and then delivered it to the former owners in part payment, on a settlement of their liability for the total loss of the cargo.

There seems to be some doubt if the words "total loss only" will preclude the insured from recovering where there is simply a constructive total loss. Parsons considers it doubtful (*2 Parsons on Contracts 389*), *Thomson* v. *Royal Exchange Ass. Co.* 16 East 219, and contra, *Hubner* v. *Eagle Insurance Co.*, 10 Grey 131. This court, however, holds that there was a total loss as to the owners, since they had abandoned the cargo to one of the underwriters. No formal notice of abandonment was necessary, since, "Actual abandonment dispenses with formal notice."

MARRIED WOMEN'S ACT—COVERTURE—STATUTE OF LIMITATIONS—BLILER v. BOSWELL, 59 Pac. Rep. 798 (Wyo.).—*Held*, upon reason and authority a statute permitting a *feme covert* to sue and be sued alone, does not by implication do away with disability of coverture that excepts her from the statute of limitations.

The weight of authority inclines the other way. The English rule as to her separate estate, even before the Married Women's Property Act, was that the disability was removed; and undoubtedly thereafter. *In re Lady Hastings*, *35 Chan. Div. 94*; *Lowe* v. *Fox*, *15 Q. B. Div. 667*. Such is the New York rule. *Clark v. Gibbons*, *83 N. Y. 107*. Contra, Miss., Ohio, North Carolina, and Texas. The reason of the disability, it is conceived, ceases when the *feme covert* is allowed to act as a *feme sole*.

NEGLIGENCE—DEFECTIVE CONSTRUCTION—OWNER'S LIABILITY—BURKE v. IRELAND, 62 N. Y. Supp. 453.—Where the defendant hired an architect to draw plans for a building which were inherently defective, *held*, he cannot evade the liability for injury to a contractor's employe caused by its collapse, as the duty of securing a solid foundation for the building rested on the defendant, though the contractor was negligent in laying the foundation. *Vogel* v. *Mayor*, 92 N. Y. 10.

Goodrich, P. J., dissented on the ground that the failure of an architect to prepare sufficient plans cannot be imputed to his principal, unless the relation of master and servant or principal and agent exists. *Berg* v. *Parsons*, 156 N. Y. 109.

PATENTS—ANTICIPATION—PRIOR KNOWLEDGE AND USE.—WELSBACH LIGHT CO. v. AMERICAN INCANDESCENT LAMP CO. ET AL., 98 Fed. 613. *Held*, one applying for a patent in the U. S. for an invention previously made by him

and patented in a foreign country, may show actual date of his application in such country to prove the actual date of the invention, so as to avoid an alleged use in this country by an infringer before the date of the foreign patent.

This decision is in conformity with that of Judge Townsend in *Hanifen* v. *Price*, 96 Fed. 435, and that of Judge Dallas in *Hanifen* v. *Godshalk*, 78 Fed. 811. In *Hanifen* v. *Price*, this point was considered as new and the present case is the first affirmation we have seen of the principles in that case. See 9 YALE LAW JOURNAL 101.

SALES—CONTRACT—INSURANCE—OPTION TO RESELL—TITLE.—STOWELL ET AL. v. CLARK ET AL., 62 N. Y. Sup. 155.—Action on a policy of insurance, conditioned to be void if the interest of the insured in the property was other than sole and unconditional. Plaintiffs had purchased the machinery covered by such policy, with an option after a certain time to return it, and receive back the money paid or to pay the balance and keep it. *Held*, that plaintiffs were entitled to collect the insurance on the property destroyed, as under the contract they took an absolute title.

A purchase with right of return passes title and risk immediately to the vendee, and leaves the vendor obliged to rebuy at the vendee's option; this is the prevailing American rule. *Martin* v. *Adams*, 104 Mass. 262; *McKinney* v. *Bradlee*, 117 Mass. 321. But some cases hold that such a conditional sale is only a bailment till the time limit has expired. This is the English rule and conflicts with American rule generally. *Elphick* v. *Barnes*, 5 C. P. D. 321; *Carter* v. *Wallace*, 35 Hunn (N. Y.) 189.

SALE OF HORSE—WARRANTY—BREACH—DAMAGES—BRUCE v. FISS, DOERR & CARROLL HORSE CO., 62 N. Y. Supp. 96.—A horse was bought under a false warranty that he was a good carriage horse. *Held*, that the purchaser can recover damages for an injury caused by an attempt to use it for that particular purpose. *Randall* v. *Newson*, 2 Q. B. Div. 102; *Jones* v. *George*, 61 Tex. 345.

Contrary to this well established rule, *Schurmeier* v. *English*, 46 Minn. 306, held that the purchaser of a warranted wagon could not recover for damages done to a horse drawing it.

SET-OFF—CLAIMS PURCHASED BY DEFENDANT AFTER SUIT BROUGHT—WELLS v. OVERBY, 54 S. W. 955 (Ky.).—*Held*, that claims against plaintiff purchased after suit brought are a proper subject of set-off.

This decision is contrary to the great weight of authority, the general rule being that a claim is not a proper subject of set-off unless it existed in favor of the defendant at the time action is brought. 22 *Am. Eng. Enc. of Law* 274.

SHIPPING—DAMAGES TO CARGO—SEAWORTHINESS—FARR & BAILEY MFG. CO. v. INTERNATIONAL NAV. CO., 98 Fed. 636.—A ship started on a voyage with one porthole insecurely fastened, which became open so that water entered and damaged cargo. *Held*, she was unseaworthy, because not in a fit condition. Gray, J., dissents.

This case was distinguished from *The Silvia*, 171 U. S. 462, where the iron ports being left open purposely to admit light, the glass ports were broken and damage done by water entering. Damage was here held to be due to fault in management, from which the owners of a ship are exempt, by the Harter Act, exempting the owners from any damage resulting from any fault or error in the navigation or in the management of the vessel.

This seems a very close distinction and one not entirely warranted by the authorities. We are inclined to follow the view of Judge Gray, who, in his dissenting opinion, cites the case of *Hedley* v. *Steamship Co.* 1894, *App. Cases*